

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

**ORIGINAL
FILE**

IN THE MATTER OF

ADVANCED TELEVISION SYSTEMS
AND THEIR IMPACT UPON THE
EXISTING TELEVISION BROADCAST
SERVICE

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TO: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS

May & Dunne, Chartered, pursuant to section 1.415 of the Commission's Rules, hereby submits these Comments on behalf of its low power television licensee and permittee clients identified in the attached Exhibit A. These Comments argue that the Commission's tentative conclusion in its Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340 (1992) (Second Report) that "the implementation of ATV service would be enhanced if all ATV operations were located in the same area of spectrum ... the UHF Band ..., " Second Report, para. 17, i.e., "UHF packing," promises minimal public interest benefits while exacting serious costs. Among the chief costs associated with the plan to "pack" all ATV channels in the UHF band, especially during the interim period when ATV licensees will be simulcasting on two frequencies, is the loss of local television service provided by LPTV licensees now operating on UHF frequencies which will be displaced when the ATV channels are activated. The loss of television service, particularly local television service, will be most obvious in the many small and medium sized communities which now have little or no

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local television service. The Commission's tentative allocation scheme endangers the substantial and unique service which is now provided by low power television stations.

1. As will be shown herein, the danger to LPTV local service which will result if the Commission adopts its tentative plans to limit ATV frequency allocations to the UHF band is real and deadly. The latest Commission figures (October 31, 1992) show that of the licensed LPTV stations, fully 840 utilize UHF frequencies, while only 466 LPTV licensees operate on VHF frequencies. Moreover, as will be shown below, several of the parties supporting these Comments would be displaced if the Commission's tentative allocation plan were adopted. Moreover, the LPTV facilities threatened by displacement are not all facilities in major markets, but include LPTV stations in communities as small as Cullman, Alabama. And, as these Comments will show, the quality of local television service, the commitment to localism, which LPTV licensees often bring to their community, is a substantial public interest benefit that cannot be easily brushed aside by the talismanic invocation of the fact that LPTV is a secondary service. Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making, FCC 92-438 (released October 16, 1992), para. 37. Whether LPTV service is secondary or not the service provided by LPTV stations is real, and simply cannot be ignored in any rational weighing of the public interest.

2. One of the parties supporting these Comments is Southtown Christian Center, the permittee of W39BC, Hamburg, New York, which

has been on the air on Special Temporary Authority since February, 1992. W39BC provides service to an area roughly 20 miles in diameter within the greater Buffalo, New York television market. The station serves primarily the Southtown suburban area of the Buffalo market, which has no other allocated local TV service. This local service includes at least 2-1/2 hours per week of local programming, including the daily locally produced program "Real Issues," which informs viewers of community events and discusses issues of importance to residents of the Hamburg, West Seneca and Orchard Park communities. Within the year Southtown will increase its local programming to five hours per week. The station promotes any number of local church and civic events, and does public service announcements promoting organizations like Hamburg's Camp for Children Suffering from Cancer. The threat to the service provided by this facility is real--the allocation plan included in the Second Report proposes to allocate a channel 38 to Buffalo for ATV use, a channel assignment which will almost certainly either displace Southtown's facility or seriously degrade Southtown's signal. Because the station is located within the Buffalo television market (the 36th largest according to Nielsen), and spectrum is otherwise crowded because of the station's proximity to the Canadian border, Southtown, to the best of its knowledge, will have no frequency or channel to apply for should its frequency be assigned to a full power station for ATV use.

3. ACTS of Marion, Inc. (ACM) is the licensee of W25BN Marion, Indiana. Once again, the danger to the station's existing

broadcast service by the Commission's "UHF packing" proposal is real. The Commission's tentative allocation scheme proposes to allocate channel 32 to Marion for ATV use, a frequency allocation which poses a considerable danger to the continuation of the station's service. Once again, because of the community's closeness to larger television markets such as Indianapolis, ACM does not believe that there is an existing alternate frequency which it might seek were its station displaced.

4. And, if the station service were extinguished by displacement, the community and service area would lose a station with an admirable record of public service. For example, the station presently broadcasts between 15 to 20 hours per week of local programming, much of it live. Local sports events, such as High school football and basketball games from the 30 local high schools are regularly broadcast. The station broadcasts a weekly live call-in show featuring Marion's mayor, and a variety show for senior citizens. In a recent show members of Marion's Crime Prevention Task Force explained the Task Force's conclusions and answered called in questions from viewers for over two hours. During this last election year the station broadcast three hour long debates between candidates for state senate, state representative and the U.S. Congress. Every year the station broadcasts live, local parades and festival events such as the Labor Day and Christmas parades, the James Dean festival, and the Mississinewa War of 1812 Battle reenactment. The irony of the Commission's policy is particularly acute here. W25BN has an

excellent record of community service and broadcasting local interest programming which will, under the Commission's tentative plan, be extinguished so that the local full power TV station, which provides little or no local programming, can have a second UHF channel.

5. Likewise, Beech Street Communications is the licensee of K35CS, Texarkana, Arkansas. Once again, the Commission's tentative plan to assign channel 42 to Texarkana, Texas poses a substantial danger to the continuation of broadcast service by the station. Beech Street, since beginning operation almost two years ago, now broadcasts almost 55 hours per week of local programming, including, most prominently, a heavy schedule of live high school sporting events. The station also provides, however, coverage of local events such as city council meetings. The station also provided live coverage of the results of local elections during the just concluded election, and sponsored and broadcast a three hour long candidate forum during which candidates for local office were given an opportunity to debate.

6. The Arizona Christian Television System, Inc. has operated K39BI since 1986. The station, serving the needs of Phoenix, provides up to 10 hours per week of local programming, including: local sports (basketball games from Grand Canyon University); "Video Zone," a local music video show stressing positive values for teenagers; and, "Grow Together," a local show about strengthening interpersonal relationships that deals with the problems of child rearing, single parenthood, family relationships

and marriage enrichment. K39BI is the only station in the market which broadcasts live local religious services.

7. K20AG has been serving its community of Anchorage, Alaska for some seven years. The station provides the only religious formatted station in the market, and is the only station that broadcasts any local religious programming of any kind. The station broadcasts 32 hours a week of local programming, although much of that programming is repeated, including "Alaska Magazine," a magazine type format program focussing on news and community affairs from a religious viewpoint. The station broadcasts a number of public service announcements each week, and has taken the lead in broadcasting public service announcements provided by the State of Alaska to increase awareness of the dangers of drug involvement. The station also provides public service announcements to promote the events and activities of local non-profit organizations, and donates advertising spots in some of its programs to local non-profit organizations to use to promote their ministry or organization's services, or to sell as a fund-raising device. Limiting the allocation of ATV channels to the UHF spectrum is particularly useless in the Anchorage market since most of the existing full power stations broadcast on VHF channels anyway, and there is still sufficient spectrum in the VHF band to accommodate almost all existing full power licensees.

8. ACTS of Cullman, Inc. (ACI) is the permittee of W52BJ, Cullman, Alabama, a community located approximately 50 miles from both Birmingham and Huntsville, Alabama. ACI has been producing

and telecasting a local program service over a cable access channel in the community for some time. ACI already does a minimum of four to five hours per week of local programming, including local high school football and basketball games. ACI also does a great deal of local interest programming such as broadcasting the Lion's Club parade each year in Cullman, and ACI was the only entity which broadcast election news concerning the election races in Cullman. ACI sought the authorization to construct the LPTV station to expand the number of people which would receive its programming because the county in which Cullman is located has a large rural population which is not concentrated enough to receive cable service. The only way that a number of these rural residents will ever receive any local news and other public service programming is via an over the air broadcast station with a commitment to local programming.

9. Surprisingly, given the rural nature of the area, the Commission's tentative allocation scheme would place ACI's hoped for local service at peril. Both the allocation of channel 53 to Birmingham, and of channel 51 to Huntsville, seriously threaten to displace ACI's proposed service or to severely limit its coverage--compromising the station's coverage to the rural areas that most need its service. From studies conducted during the last LPTV window ACI also does not believe that alternate frequencies are available should its proposed station be displaced.

10. Similarly, Christian Family Network TV (CFNT), the permittee of K30DJ in Wichita Falls, Texas, has been producing and

telecasting local programming on a cable channel in its community for some time. CFNT sought the LPTV authorization because of the number of homes which did not have access to the cable system either because they could not afford cable service or lived in rural areas outside town where cable service was not available. At the present time CFNT telecasts no less than 10 hours per week of local programming, much of it live. Recently CFNT broadcast a half-hour documentary program on gang violence in the community entitled "No Colors," followed by a live call-in show in which social service workers, police officials and educators answered questions about gang violence and how to respond to the problem. Once again, the tentative allocation scheme proposed by the Commission includes a number of channel 30 allocations which could, conceivably, result in the displacement of CFNT's proposed service. Also, based on studies undertaken during the last window, CFNT does not believe any alternate channels are available for application should its channel be displaced.

11. What almost all of the LPTV licensees and permittees discussed above have in common is a real threat to their continuing broadcast service if the Commission's allocation plan is adopted as proposed, both because the channels proposed for ATV use will result in the station's displacement, and because there is not enough spectrum left to provide an alternate frequency for use should the station be displaced. The stations also have something else in common--a common commitment to public service and local programming which the Commission has so many times in so many

contexts stated is the sine qua non of broadcast service in the public interest. These and other LPTV stations have taken the Commission's commitment to localism seriously, and no other available technology is so uniquely able and qualified to provide local service to small and medium sized communities which at present have little or no television service. This local service, and the public interest that it represents, deserve to be weighed carefully against the largely illusory benefits which the Commission claims are the result of its tentative proposal to allocate all ATV frequencies to the UHF band.^{1/} It is not argued, here, that the Commission should change its traditional policy concerning the secondary nature of LPTV station service. Nor do these Comments argue that specific frequencies be changed or specific LPTV stations be protected by the Commission's tentative allocation plan. These Comments only suggest that the Commission not so rigorously limit the spectrum available for ATV use to only the UHF spectrum which will have obvious and unpleasant consequences for the service provided, largely on UHF channels, by LPTV licensees. There is no technical or administrative problem that the use of the VHF spectrum for ATV use, in at least some markets, that counterbalance the possibly catastrophic loss of local service provided by LPTV stations which the Commission's UHF

^{1/}For example, the Commission asserts substantial equipment cost savings will be reaped under its "UHF packing" plan. This ignores the fact that 17 VHF allocations--apparently the bare minimum necessary to reach the Commission's undefined goal of full accommodation--will nevertheless require equipment development costs.

packing proposal threatens. Accordingly, the public interest requires that the Commission reverse its tentative conclusion that ATV frequencies be allocated only to the UHF band and make full use of the VHF spectrum available to preserve and protect the existing local service provided by LPTV stations.

Respectfully Submitted,

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EXHIBIT A

LIST OF PARTIES SUPPORTING THESE COMMENTS

1. ACTS of Cullman, Inc., permittee of LPTV construction permit for W52BJ, Cullman, Alabama.
2. ACTS of Marion, Inc., licensee of LPTV station W25BN, Marion, Indiana.
3. Alaska Broadcast Television, Inc., licensee of LPTV station K20AG, Anchorage, Alaska.
4. Arizona Christian Television System, Inc., licensee of LPTV station K39BI, Phoenix, Arizona.
5. Beech Street Communications, licensee of LPTV station K35CS, Texarkana, Arkansas.
6. Christian Family Network TV, permittee of LPTV construction permit for K30DJ, Wichita Falls, Texas.
7. Southtown Christian Center, permittee and operator of W39BC, Hamburg, New York.